

APPEAL NO. 050888
FILED MAY 25, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 21, 2005. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the second quarter. The appellant (carrier) appealed, disputing the determination of SIBs entitlement. The appeal file does not contain a response from the claimant.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(e) (Rule 143.3(e)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(e) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

The carrier alleges in its appeal that it received the Decision and Order of the hearing officer on March 31, 2005. However, records of the Commission show that the decision of the hearing officer was distributed to the parties on March 28, 2005. Rule 102.5(d) provides in pertinent part that, for purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of the evidence indicates otherwise, the Commission shall deem the received date to be the first working day after the date the written communication was placed in a carrier's representative's box. A date stamp on the cover letter to the hearing officer's decision reflects that it was placed in the carrier's representative's box on March 28, 2005. The first working day after March 28, 2005, was Tuesday, March 29, 2005. We also note that the carrier's representative signed for the decision and order on March 29, 2005. The last date for the carrier to timely file an appeal would be Tuesday, April 19, 2005. The carrier's appeal is dated April 21, 2005, and was received by the Commission via facsimile transmission on April 21, 2005. The carrier additionally sent a copy of its appeal to the Commission by United States Postal Service regular mail on April 21,

2005, and was date stamped as received by the Commission on April 25, 2005. The appeal, having been filed after April 19, 2005, was thus, untimely.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer have become final under Section 410.169.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701-3403.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge